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State v. Smith Respondent's Brief Dckt. 43216

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43216
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR-2014-10580
)	
KODI DANIEL SMITH,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Smith failed to establish that the district court abused its discretion by denying his Rule 35 motion for a reduction of his unified sentence of nine years, with one year fixed, imposed upon his guilty plea to possession of methamphetamine?

Smith Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Pursuant to a Rule 11 plea agreement, Smith pled guilty to possession of methamphetamine and the district court imposed a unified sentence of nine years, with one year fixed. (R., pp.80-86.) As part of the plea agreement, Smith waived both his right to appeal his sentence (unless the court exceeded the three-year determinate

portion of the state's sentencing recommendation) and his right to file a Rule 35 motion. (R., pp.58-68, 82.) Smith filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.97-103.) Smith filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.104-08.)

"Mindful of the fact that [he] did not submit new information in support of his motion," Smith nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence because he "accepted responsibility for his actions by entering his plea, and he acknowledged in the guilty plea advisory form that he was indeed guilty." (Appellant's brief, pp.2-3.) Smith's claim fails because he specifically waived his rights to appeal his sentence and to file a Rule 35 motion for sentence reduction when he entered into the plea agreement.

The waiver of the right to appeal as a component of a plea agreement is valid and will be enforced if it was made voluntarily, knowingly and intelligently. State v. Murphy, 125 Idaho 456, 872 P.2d 719 (1994).

Pursuant to the plea agreement, signed by Smith, Smith waived his right to file a Rule 35 motion (except as to an illegal sentence) and also waived his right to "appeal any issues in this case, including all matters involving the plea or the sentence and any rulings made by the court" as long as the district court did not exceed the three-year determinate portion of the state's sentencing recommendation. (R., p.68 (emphasis original).) In the guilty plea advisory, also signed by Smith, Smith acknowledged that he was waiving his right to appeal his conviction and sentence as part of the plea agreement. (R., p.61.) Smith's plea was entered knowingly, intelligently and voluntarily, in accordance with the filed "Plea/Offer," and Smith has not challenged that

determination on appeal. (R., p.57.) The district court did not exceed the determinate portion of the state's sentencing recommendation; therefore, Smith did not retain his right to appeal his sentence or to file a Rule 35 motion for a reduction of sentence. Because Smith specifically waived his rights both to appeal his sentence and to file a Rule 35 motion for a reduction of sentence, he cannot challenge his sentence or the denial of his Rule 35 motion on appeal, and his appeal should be dismissed.

Even if this Court finds that Smith did not waive his rights to appeal and to file a Rule 35 motion for a reduction of sentence, Smith's claim still fails. In State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007), the Idaho Supreme Court observed that a Rule 35 motion "does not function as an appeal of a sentence." The Court noted that where a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. Id. Thus, "[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Absent the presentation of new evidence, "[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence." Id. Accord State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008).

Smith did not appeal the judgment of conviction in this case. On appeal, he acknowledges that he failed to submit any new or additional information in support of his Rule 35 motion. (Appellant's brief, p.3.) Because Smith presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

Conclusion

The state respectfully requests that this Court dismiss Smith's appeal because he waived his rights to appeal his sentence and to file a Rule 35 motion for sentence reduction. Alternatively, the state respectfully requests this Court to affirm the district court's order denying Smith's Rule 35 motion for a reduction of sentence.

DATED this 30th day of December, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General